

REMARKS

Claims 1 to 4 and 6 to 20 are in the application.

The Examiner has provided Applicants with a one month time frame for reply to the outstanding rejection of the claims under 35 USC § 103(a) for failure of the USPTO to forward an English translation of the cited references.

Applicants at their own expense had chosen, in view of the failure of the USPTO to forward said translations, to obtain and have translated on their own each of the four references (Yu et al., Wu et al., Zhang et al. and Ran et al.). Those references were sent to the USPTO with Applicants response. The USPTO has not re-forwarded such with this office action even though the Examiner's action indicates this.

The outstanding rejection(s) for which the one month period to respond are:

Claims 1 to 4 are rejected to under 35 USC § 103(a) as being unpatentable over Yu et al., Yaxxue Xuebao (1983), 18(10), pg 766-74.

Claims 1 to 4 are rejected to under 35 USC § 103(a) as being unpatentable over Ran et al., Yaxxue Xuebao (1984), 19(5), pg 361-6.

Claims 1 to 4 are rejected to under 35 USC § 103(a) as being unpatentable over Zhang et al., Yaxxue Xuebao (1985), 20(10), pg 752-8.

Claims 1 to 4 are rejected to under 35 USC § 103(a) as being unpatentable over Wu et al., Yaxxue Xuebao (1993), 3(1), pg 23-6.

Applicant respectfully traverses all of these rejections.

Applicants have already responded to the above rejections for Yu et al., Ran et al. and Wu et al. in their response of 10 July 2008 and incorporate by reference herein all of those comments.

As noted in the 10 July 2008 response and in this office action the Examiner has failed to indicate if it is the full journal article (each in Chinese), or the English Abstract of these article(s) which form the basis of each of the rejections herein.

The USPTO Manuel §706.02 (II) states that the Examiner must indicate if it is the abstract of the full text which is the basis of the rejection. Again, Applicants request clarification of the record as to specifically where in each of the cited references the rejection lies.

In an attempt to be responsive to the Examiner's rejection, the Yu et al. (1983) reference cites their earlier 1981 work. This reference is a paper on the solvent extraction for tertiary amine. The compounds which are believed to be "analogous compounds" as identified by the Examiner in this paper appear on page 771 and include methylbenethropine, benethropine, benzotropine, and benethropine. The actual translation does not indicate that these compounds possess any pharmacological activity, let alone anticholinergic activity.

The Ran et al. paper on the other hand indicates that the "majority of these chemical compounds exhibit clear anticholinergic activity and equivalent central nervous system and peripheral nervous system activity" (see abstract). Ran cited Zirkle in the text and provides synthesis of a number of compounds. No actual biological data is provided although there are some limited structure-effect relationships described. The Ran et al. paper does not attempt to formulate the compound for development. The Ran et al. paper does direct the skilled artisan to the use of these compounds for the treatment of disease and conditions of the respiratory tract via the inhaled route of administration.

The Wu et al. paper is also similar in that it states in the abstract that "The results of pharmacological experiments show that they all posses an anticholinergic effect". The compounds of Wu do not appear to be quaternary salt forms as required by Claim 1 herein. No actual biological data is provided. The Wu et al. paper does not attempt to formulate the compound for development. The Wu et al. paper does direct the skilled artisan to the use of these compounds for the treatment of disease and conditions of the respiratory tract via the inhaled route of administration.

The Zhang et al. paper is directed to a method of detecting tertiary amines. Some of these are similar compounds to that of Yu et al. reference above. No pharmacological activity is described. No formulation work or biological testing is provided therein.

None of these references are directed to compositions of the disclosed compounds. None of the references are directed to a particular type of pharmaceutical composition, e.g. a dry powder inhalation composition, for quaternary salt forms of the compounds of formula (I), as claimed in Claim 1. Claims 9 and 10 are directed to a device which uses this type of formulation. New claims 18 to 20 are specific to a

"metered dose inhaler" or to a "multi-dose dry powder inhaler". The cited references do not teach nor disclose such devices or compositions using such devices.

The Examiner has not provided any motivation to direct the skilled artisan to make a dry powder inhaled pharmaceutical formulation with the compounds of Yu, Ran, Wu, Zhang or Zirkle. Consequently, the Examiner and the USPTO have failed to make out a *prima facie* case of obvious.

In view of these remarks, reconsideration and withdrawal of the rejection to the claims under 35 USC §103 is respectfully requested.

It is believed that the claims, as amended, are now all in condition for allowance. Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned at the number below. It is not believed that this paper should cause any additional fees or charges to be required, other than expressly provided for already. However, if this is not the case, the Commissioner is hereby authorized to charge Deposit account 19-2570 accordingly.

Respectfully submitted,



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